

MARY JO WHITE
 United States Attorney
 Southern District of New York
 By: NICOLE L. GUERON (NG-7682)
 Assistant United States Attorney
 100 Church Street
 New York, New York 10007
 (212) 637-2699

ORIGINAL

99 CIV. 5716

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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 UNITED STATES OF AMERICA,

Plaintiff,

99 Civ. ____ ()

- v. -

COMPLAINT

CLEMSON PARK CONDOMINIUM and
 GEM COMMUNITY MANAGEMENT, INC.,

JURY TRIAL DEMANDED

Defendants.
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Plaintiff, the United States of America, by its attorney, Mary Jo White, United States Attorney for the Southern District of New York, alleges upon information and belief, for its complaint as follows:

SUMMARY OF THIS ACTION

1. This is a civil action for declaratory relief, injunctive relief, and compensatory and punitive damages brought by the United States on behalf of Yvonne Marchfeld ("Marchfeld") to redress discrimination on the basis of physical disability in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.* (the "Act"). The United States of America seeks a trial by jury as to the issues of liability and compensatory and punitive damages.

2. As more fully alleged herein, the defendants Clemson Park Condominium ("Clemson") and GEM Community Management, Inc. ("GEM") violated the Act by, *inter alia*, refusing to provide Marchfeld with an appropriate parking space in close proximity to her condominium unit.

3. The defendants' conduct violates the Act and should be declared unlawful and permanently enjoined, and appropriate money damages should be awarded.

JURISDICTION AND VENUE

4. The Court has jurisdiction over the subject matter of this action pursuant to Section 812(o) of the Act, 42 U.S.C. § 3612(o), and pursuant to 28 U.S.C. §§ 1331 and 1345.

5. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 812(o) of the Act, 42 U.S.C. § 3612(o).

6. Venue is proper under 28 U.S.C. § 1391(b) and (c). The defendants are located and conduct business in this district, and the events giving rise to this complaint occurred in this district.

THE PARTIES

7. The plaintiff is the United States of America.

8. Defendant Clemson is a condominium complex located within the Southern District of New York, at 73 Sycamore Drive, Middletown, New York. 10940. The condominium units that comprise Clemson Park Condominium are "dwellings" within the meaning of 42 U.S.C. § 3602(b).

9. Defendant GEM is a corporation doing business within the Southern District of New York, located at 141 Dunning Road, Middletown, New York 10940. From

October 1994 through early 1999, GEM was the managing agent for Clemson Park Condominium.

FACTS

10. Marchfeld is a person with a "handicap" within the meaning of 42 U.S.C. § 3602(h). Marchfeld suffers from multiple sclerosis and must use a wheelchair for mobility at all times.

11. From October 11, 1994 to the present, Marchfeld has been a resident of Clemson Park Condominium.

12. Clemson consists of 160 condominium units. Marchfeld owns and lives in a unit in Section 7 of Clemson, which consists of 8 units and has approximately 20 parking spaces in the areas adjacent to it. These parking spaces are unnumbered and unassigned.

13. In October 1995, Marchfeld bought a van specially equipped with a wheelchair lift. Marchfeld requires and has repeatedly requested a parking space in close proximity to her condominium unit with sufficient adjacent space to allow her access to and from the wheelchair lift on her van.

14. In or about December 1995, defendants informed Marchfeld that she was forbidden from parking her van in the parking spaces in close proximity to her condominium unit. Defendants instructed Marchfeld that she would instead be required to park her van in an area near the Clemson swimming pool, which is located approximately two blocks uphill from Marchfeld's condominium unit.

15. Marchfeld responded that this location did not accommodate her needs and requested a reasonable accommodation of her needs as a disabled individual who uses a

wheelchair.

16. For a brief period in 1996, defendants assigned Marchfeld two parking spaces near her condominium unit. Shortly thereafter, however, Clemson revoked Marchfeld's right to use the two spaces.

17. Defendants thereafter assigned Marchfeld to a parking space that does not accommodate her disability. The parking space is several spaces away from her condominium unit and is directly next to a garbage dumpster. The distance from the parking space to Marchfeld's unit is burdensome, and the presence of the dumpster interferes with the parking of Marchfeld's van and Marchfeld's access to and use of the van's wheelchair lift. The location of the parking space renders the van susceptible to damage from garbage trucks moving the garbage dumpster, and the dumpster attracts insects to the parking space and has an unpleasant odor.

18. Because the wheelchair lift on Marchfeld's van operates slowly, she is exposed to the insects and odor from the dumpster for a lengthy period each time she uses the van.

19. By letter dated January 29, 1998, counsel for Clemson instructed Marchfeld that "you are to park only in the newly designated parking space and your failure to do so will be a violation of the Condominium Rules, Regulations and By-Laws and subject to the penalties therein." (Letter attached as Exhibit A).

20. The parking space closest to Marchfeld's unit is used exclusively by a member of the Clemson Board of Directors, despite the fact that parking spaces are officially unassigned.

21. On or about April 27, 1998, Marchfeld filed a timely complaint of housing

discrimination on the basis of physical disability with the United States Department of Housing and Urban Development ("HUD") pursuant to Section 810(a) of the Fair Housing Act, as amended, 42 U.S.C. § 3610(a). Marchfeld alleged, *inter alia*, that defendants violated the Fair Housing Act by refusing to accommodate her disability by providing her with an appropriate parking space in close proximity to her condominium and by harassing her concerning the parking of her van.

22. Pursuant to the requirements of 42 U.S.C. § 3610 (a) and (b), the Secretary of HUD conducted an investigation of Marchfeld's complaints, attempted conciliation without success, and prepared a final investigative report. Based on information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that discriminatory housing practices had occurred. Therefore, on or about May 28, 1999, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging defendants with engaging in discriminatory housing practices in violation of Section 804 of the Fair Housing Act, as amended, 42 U.S.C. § 3604.

23. On or about June 18, 1999, defendant Clemson elected to proceed in this Court, rather than administratively, pursuant to 42 U.S.C. § 3612(a).

24. By letter dated July 15, 1999, the Secretary authorized the Attorney General to commence a civil action on Marchfeld's behalf pursuant to 42 U.S.C. § 3612(o).

CLAIMS FOR RELIEF

25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

26. Defendants, in denying Marchfeld an appropriate, designated parking space

in close proximity to her condominium apartment, have discriminated against Marchfeld in the provision of services or facilities in connection with her dwelling, because of a handicap, in violation of 42 U.S.C. § 3604(f)(2)(A).

27. Defendants, in denying Marchfeld an appropriate, designated parking space in close proximity to her condominium apartment, have discriminated against Marchfeld by their refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations are necessary to afford Marchfeld an equal opportunity to use and enjoy her dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

28. Marchfeld is an aggrieved person, as defined in 42 U.S.C. § 3602(i), and has suffered damages as a result of the defendants' conduct described herein.

29. The discriminatory actions of defendants were intentional, willful, and taken in disregard of Marchfeld's rights.

RELIEF REQUESTED

WHEREFORE, plaintiff United States of America prays that the Court enter judgment:

A. Declaring that the discriminatory housing practices of the defendants as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.*;

B. Permanently enjoining the defendants, their agents, employees and successors, and all other person in active concert or participation with any of them, from engaging in discriminatory housing practices based on handicap and ensuring the full enjoyment of the rights granted by the Fair Housing Act, as amended. More specifically, the United States prays that the Court enter an order that permanently enjoins the defendants from refusing to make reasonable

discriminatory housing practices based on handicap and ensuring the full enjoyment of the rights granted by the Fair Housing Act, as amended. More specifically, the United States prays that the Court enter an order that permanently enjoins the defendants from refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford handicapped persons equal opportunity to use and enjoy dwellings;

C. Awarding such damages as will compensate Marchfeld fully for the damages caused by the defendants' discriminatory conduct, pursuant to 42 U.S.C. § 3612(o)(3) and 42 U.S.C. § 3613(c);

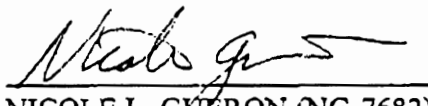
D. Awarding punitive damages to Marchfeld pursuant to 42 U.S.C. § 3612(o)(3) and 42 U.S.C. § 3613(c); and

E. Granting such further relief as the Court may deem just.

Dated: New York, New York
July 16, 1999

MARY JO WHITE
United States Attorney for the
Southern District of New York
Attorney for Plaintiff
United States of America

By


NICOLE L. GUERON (NG-7682)
Assistant United States Attorney
100 Church Street, 19th Floor
New York, New York 10007
Tel.: (212) 637-2699

RONALD E. HELHOSKI, P.C.
ATTORNEY AT LAW
POST OFFICE BOX 3016
MIDDLETOWN, NEW YORK 10940
(914) 342-2444
FAX (914) 342-2438

OFFICES LOCATED AT
517 East Main Street
Middletown, New York

January 29, 1998

Ms. Yvonne Marchfeld
73 Sycamore Drive
Middletown, New York 10940

RE: Clemson Park Condominium

Dear Ms. Marchfeld:

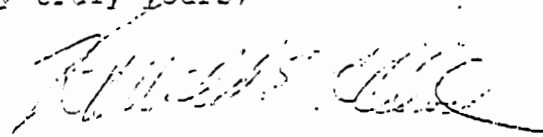
By letter of November 21, 1997 I advised Mr. Genera of Action Toward Independence that the Clemson Park Condominium Board of Managers assigned you a parking space adjacent to the yellow striped area to better accommodate your wheelchair equipped Van. I further advised Mr. Genera that this parking space would be permanent unless a request to return to your original designated parking space was made no later than December 15, 1997.

Although you made no further request to return to your original assigned parking space, you have failed to park in the recently designated space to date, which is a violation of the Board's direction.

Please be advised that you are to park only in the newly designated space and your failure to do so will be a violation of the Condominium Rules, Regulations and By-Laws and subject to the penalties therein.

Please advise if you have any questions.

Very truly yours,


Ronald E. Helhoski

REH/sk